

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

KHALID SHAIKH MOHAMMAD, WALID
MUHAMMAD SALIH MUBARAK BIN
‘ATTASH, RAMZI BIN AL SHIBH, ALI
ABDUL-AZIZ ALI, MUSTAFA AHMED
ADAM AL HAWSAWI

AE 6CC (KSM)

Mr. Mohammad’s Motion For
Excusal of LtCol Poteet as
Defense Counsel

14 April 2020

1. Timeliness

This motion is timely filed.

2. Overview

Mr. Mohammad requests that LtCol Poteet be excused as detailed military defense counsel effective 30 June 2020. LtCol Poteet has received orders to depart his current duties in July 2020 for a different military assignment. Mr. Mohammad is represented by Learned Counsel, by other detailed military defense counsel, and by civilian defense counsel. Mr. Mohammad consents to excusal of LtCol Poteet, and does not request delay on this basis.

3. Burden of Proof

As the moving party, the defense carries the burden of persuasion per R.M.C. 905(c)(2).

4. Facts

a. In September 2010, LtCol Poteet was assigned to the Military Commissions Defense Organization, at the time referred to as the Office of the Chief Defense Counsel, and in 2011 LtCol Poteet was assigned to the defense team for Mr. Mohammad.

b. On 20 April 2012, LtCol Poteet entered his appearance in these proceedings as detailed defense counsel for Mr. Mohammad.¹

¹ AE 12, CDC Memorandum Detailing Maj Derek A. Poteet as Defense Counsel, 20 April 2012.

- c. LtCol Poteet formed an attorney-client relationship with Mr. Mohammad.
- d. On 23 March 2020, LtCol Poteet received permanent change of station orders requiring that he depart his current duties in July 2020 for a different military assignment.
- e. Mr. Mohammad consents to the excusal of LtCol Poteet from continued service as his detailed military defense counsel, and does not seek a delay on this basis.
- f. Mr. Mohammad is represented by other detailed military defense counsel, Maj Delimata and LT Berg, consistent with 10 U.S.C. § 948k.²
- g. Mr. Mohammad is further represented by Learned Counsel as well as other experienced and competent counsel in these proceedings.

5. Law and Argument

The Military Commissions Act of 2009 provides that, in a capital military commission, the defendant has the right “to the greatest extent practicable” to be represented by a counsel who is “learned in applicable law relating to capital cases”³ The statute further provides “military defense counsel shall be detailed for each military commission”⁴ and addresses the detailing of other defense counsel and representation by civilian counsel.⁵

Rule for Military Commission 505(d)(2)(B) states in relevant part, “after an attorney-client relationship has been formed between the accused and any counsel for the accused, only the military judge may excuse or change counsel upon a showing of good cause on the record.”⁶

² Maj Delimata and LT Berg have entered their notices of appearance in this matter; AE 4YY (KSM) and AE 4ZZ (KSM), filed 14 April 2020.

³ 10 U.S.C. § 949a(2)(C)(ii).

⁴ 10 U.S.C. § 948k(a)(1).

⁵ 10 U.S.C. §§ 948k(a)(1)-(4), 948k(c), and 949c(b).

⁶ The Department of Defense revised the provisions of R.M.C. 505 for excusal of defense counsel after the events described in *In re Al-Nashiri*, 921 F.3d 224 (D.C. Cir. April 16, 2019) (*Al-Nashiri III*). See *Manual for Military Commissions* (May 2, 2019 ed.), and *Al-Nashiri III*, 921 F.3d at 227-230, 239-240.

After serving in his current assignment for almost a decade, LtCol Poteet recently received permanent change of station orders to a new military assignment. Mr. Mohammad consents to the excusal of LtCol Poteet as his detailed military counsel. Mr. Mohammad is represented by other detailed military defense counsel, and by other qualified defense counsel including Learned Counsel.

Conclusion. Based on the foregoing facts including the consent of Mr. Mohammad, the Military Commission should grant the motion to excuse LtCol Poteet. Mr. Mohammad requests that LtCol Poteet be excused as detailed defense counsel effective 30 June 2020.

6. Conference

Based on the representation that Mr. Mohammad is being represented by other detailed military defense counsel, the government does not oppose this motion.

7. Oral Argument

Oral argument is not requested.

8. Witness and Evidence

None.

9. List of attachments

A. Certificate of Service.

Respectfully submitted,

//s//
GARY D. SOWARDS
Learned Counsel

//s//
DEREK A. POTEET
LtCol, U.S. Marine Corps
Defense Counsel

//s//
DAVID Z. NEVIN
Defense Counsel

//s//
RITA J. RADOSTITZ
Defense Counsel

//s//
DENISE M. LeBOEUF
Defense Counsel

//s//
MARIA L. DELIMATA
Maj, U.S. Air Force
Defense Counsel

Counsel for Mr. Mohammad

//s//
MELANIE T. PARTOW
Defense Counsel

//s//
PETER N. BERG
LT, U.S. Navy
Defense Counsel

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on the 14th day of April 2020, I electronically filed the foregoing document with the Chief Clerk of the Military Commissions Trial Judiciary and delivered the foregoing to all counsel of record by electronic mail.

//s//
GARY D. SOWARDS
Learned Counsel